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**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

ENE/171250

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 05, 2016, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Winnebago County Department of Human Services in regard to Energy Assistance, a hearing was held on April 05, 2016, at Neenah, Wisconsin.

The issues for determination are whether Petitioner's adult children must be included in her household for Wisconsin Home Energy Assistance Program (WHEAP) purposes and whether a December 2015 WHEAP application was correctly denied because of income in excess of income WHEAP limits.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

||

Respondent:

Department of Administration  
101 East Wilson Street  
Madison, Wisconsin 53703

By: [REDACTED] Energy Services Worker  
Winnebago County Department of Human Services  
220 Washington Ave.  
PO Box 2187  
Oshkosh, WI 54903-2187

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Winnebago County.
2. Petitioner applied for Wisconsin Home Energy Assistance Program benefits in December 2015. That application was denied because income was in excess of program limits.

3. Petitioner's household size was determined to be 4 – Petitioner, her spouse and their 2 adult children ages 18 and 20). The adult children are college students.
4. The agency determined household income to be in excess of \$22,000.00 for the three months prior to the application month.
5. The income limit for the 2015-16 heating season was \$12,308.00. Found at <http://homeenergyplus.wi.gov>.

### **DISCUSSION**

The Energy Assistance Program is mandated by *Wis. Stat. §16.385*. The Department of Administration administers the program. *Id.*, §16.385(2)(a). The Department does so by publishing the *Wisconsin Energy Assistance Program and Operations Manual*. The Manual must follow the mandate of the statute, but it is up to the Department to specify policies where the statute is silent.

For the Energy Assistance program, a household consists of all persons who live in the house on the date of application. *WHEAP Program and Operations Manual*, § 2.2.6. There is an exception for college students who live away from home except for holidays:

#### **2.2.6.3. Household Members Not Included on Application**

...

3) College students, unless they live in the home full-time and are commuting to school. If the student has any living facilities other than the home they may not be counted in the household—for example: have a dorm room, rent a room or an apartment. Individuals who have started their post-secondary education may not be counted as household members during semester breaks, or over the summer (between terms), unless they are commuting students.

...

*WHEAP Program and Operations Manual (WHEAP Manual)*, §2.2.6.3.

There is no indication here that the exception applies.

In order to be eligible for the Wisconsin Heating and Energy Assistance Program (WHEAP) a household must have gross income at or below 60% of the median income in Wisconsin. *WHEAP Manual* §2.3.1. All gross household income must be counted. *WHEAP Manual* §2.3.2. Income from employment and disability must be counted when calculating household income. *WHEAP Manual* §2.3.7

Petitioner did hope that her adult children could be excluded from the household. She did not otherwise dispute the income determination but notes that her husband has had a series of series health issues that has affect household income.

The Division of Hearings and Appeals does not possess equitable powers. *See, e.g., Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp. 540, 545 (E.D. Wis.1977). It is a creation of statute and must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. The Division of Hearings and Appeals cannot change or create law or policy.

I must conclude that the agency correctly determined household composition and correctly denied the December 2015 WHEAP application because of income in excess of income limits. Petitioner was advised at the hearing that she could reapply before May 15, 2016; it is not known if she did so.

### **CONCLUSIONS OF LAW**

That the WHEAP agency correctly included Petitioner's children in the household and correctly denied the December 2015 WHEAP application because of income in excess of income limits.

**THEREFORE, it is**

**ORDERED**

That this appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Administration, 101 East Wilson Street, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 20th day of June, 2016

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on June 20, 2016.

Winnebago County Department of Human Services  
DOA - Energy Assistance